

June 24, 2011

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Re: Fourth Draft – Delta Plan

Dear Chairman Isenberg and Members of the Council:

On behalf of the Ag-Urban Coalition (“Coalition”), the Association of California Water Agencies submits these comments regarding the fourth draft of the staff’s Draft Delta Plan (“Draft Delta Plan”). The Coalition includes water agencies and organizations, statewide agricultural and business interests, and local government above, within and below the Sacramento-San Joaquin Delta (“Delta”). As a Coalition we have submitted comment letters on previous drafts of the Delta Plan. We have also submitted a comprehensive Alternate Delta Plan that represents our perspective as to how the Delta Stewardship Council (“Council”) might proceed to fulfill its statutory role as defined in the 2009 Comprehensive Water Legislation package (*SB X7 1; Delta Reform Act of 2009*).

The Council Must Identify The Alternate Delta Plan Appropriately In The EIR. We appreciate the fact that the Council accepted our request to include the Alternate Delta Plan as a stand-alone alternative as staff begins to develop the draft environmental impact report (“EIR”). We are concerned as to the manner in which the Alternate Plan is described in the staff matrix, i.e. “*Increased Emphasis on Use of Delta for Reliable Water Supplies*”. A more accurate depiction of the Alternate Delta Plan would be “*A Comprehensive Strategy for Advancing the Co-Equal Goals of Water Supply Reliability and Restoring the Delta Ecosystem*”. From the onset of the development of the Alternate Delta Plan, each member of the Ag-Urban Coalition recognized that for the plan to be credible, equal consideration and alignment of actions must be allocated to both the co-equal goals, restoration of the Delta environment and improvements in California’s water supply reliability. The Alternate Delta Plan was designed with the basic premise that you cannot achieve one co-equal goal without achieving the other; nor can one be done at the expense of the other. We would suggest that future alternate matrices eliminate any descriptive label and just identify the alternative with a simple number and the author.

While we acknowledge that the fourth draft of the Delta Plan contains significant improvements over the previous three drafts, the fourth draft, in seeking to impose regulatory authorities not provided by the statute, still represents a departure from the legislative intent set forth in SB X7 1 which created the Delta Stewardship Council and directed the Council to develop a Delta Plan. We look forward to discussing the Alternate Delta Plan in the context of achieving the co-equal

goals as the environmental review process required by the California Environmental Quality Act (“CEQA”) unfolds.

The Council’s Goals Are Unclear. As we have stated in previous comment letters, none of the draft Delta Plans has clearly articulated the specific goals and objectives the Council intends to accomplish in the immediate-, near- and long-term or how the Council defines success. Like the previous drafts, the fourth draft states several times that the Delta Plan should be scientifically driven. Yet there is no significant commitment given to the development and implementation of a Delta Science Plan. As we pointed out in our June 10, 2011 policy letter, these are just a few of the critical policy questions the Council needs to struggle with and resolve before it proceeds with refining and finalizing its Delta Plan.

A Comprehensive Ecosystem Approach is Essential. The Council needs to pursue a Delta Plan that considers, evaluates and addresses in a comprehensive and most importantly integrated manner, all the significant factors (“stressors”) that are adversely affecting the Delta ecosystem. Our review of this draft again leads us to the conclusion that it continues to be the intent of the Council to focus primarily on one component – water flow into and out of the Delta as the primary solution to restoring the Delta ecosystem. This ill-conceived approach is exacerbated by the proposition that the Council pursue a future Delta flow regime that mirrors past “natural flow regimes”. To the best of our knowledge the Council has yet to define what it envisions as a “more natural hydrograph”. There has been no attempt to model the outcomes of a “more natural hydrograph” in terms of water supply reliability throughout the state, or the potential impacts on efforts to improve aquatic ecosystems outside the Delta. An evaluation of such environmental impacts is critical to determining whether creating a more natural hydrograph is appropriate. As pointed out several times by the Council’s lead scientist, it is not about flows, per se, but about identifying critical ecological characteristics for restoring the Delta ecosystem and then exploring actions to reestablish those characteristics consistent with the broader policy criteria embodied in the coequal goals. We believe that an era driven by the policy directive to accomplish the coequal goals will require dramatic change from the environmental management approaches of the past. Instead of prolonging a failed one-dimensional flow-based approach, the Delta Plan must jumpstart a comprehensive approach to ecosystem management in which flows are integrated into a much larger portfolio that addresses all stressors as emphasized in the Alternate Delta Plan. Failure to take this more comprehensive approach will create a significant risk that the Council will fail to achieve the co-equal goals, and at the same time drive away the very partners they need to successfully implement the Delta Plan.

A Viable Plan Must Actually Accomplish the Coequal Goals. The seven alternatives set forth in the summary matrix, *Conceptual Delta Plan Draft EIR Alternatives*, distributed at the June 16

Council meeting, appear to provide a sufficient range of alternatives to satisfy the CEQA requirements.. However, we do not believe that all (or even most) of the alternatives can, in fact, achieve any reasonable interpretation of the coequal goals. The Alternate Delta Plan recognizes that both water supply reliability and restoring the Delta ecosystem are coequal goals that need to be advanced concurrently. One goal should not be fulfilled at the cost of abandoning or reducing commitment to achieving the other goal. As with the previous drafts, the fourth draft and most of the other alternatives, focus on a strategic approach that apparently seeks to compel reductions in current water supplies as a primary strategic element of the Delta Plan.

The Alternate Delta Plan, on the other hand, calls for a comprehensive approach where Council's Independent Science Board develops a Delta Science Plan that assesses the potential interactions between the various factors adversely affecting the Delta ecosystem within the context of ensuring a reliable water supply. This approach is consistent with the recommendations by several scientists with expertise in the Delta, including the Council's own lead scientist, that the Council (and State Water Resources Control Board in its development of Delta flow criteria) should focus on identifying and managing for critical ecological characteristics that will improve the Delta ecosystem ("ecological functionality") and consequently, listed species' population viability.

Regulatory Emphasis Will Not Be Effective. We remain extremely concerned with the expansive approach proposed in the draft Delta Plan as to how the Council will use its very limited statutory authority to review consistency determinations for "covered actions" in the Delta. Such an approach will most likely have a chilling effect on parties outside the Delta who are essential for the implementation of flexible water management tools (e.g. expanding water storage, improving water conveyance, and encouraging water transfers) that are crucial to achieving both the coequal goals. Furthermore, the regulatory policies addressing covered actions in some sections of the draft Delta Plan appear inconsistent with the recommendations set forth in other sections of the draft plan. For example, ER P1 (page 88) states that "*the Council could determine that a covered action that would increase the capacity of any water system to store, divert, move, or export water from or through the Delta would not be consistent with the Delta Plan until revised flow objectives are implemented.*" This is counter to WR R4 and WR R5 in Chapter 4, *A More Reliable Water Supply for California*", page 69, where the Council recommends that both DWR and the California Water Commission should identify where existing surface and groundwater storage facilities can be expanded or where new storage facilities may be developed. One of the most significant actions that can be taken to improve both water supply reliability and ecosystem restoration is to change the timing of flows and diversions such that more water is stored during wet conditions which can be made available for consumptive and environmental needs during dry periods. The Council recommends a more

“natural” hydrograph, but that must be accompanied by a change in the timing of diversions and an increase in storage to ensure water supply reliability is simultaneously improved. As written, ER P1 could block any increases in storage or increases in diversions during wet periods effectively undermining the opportunity to balance the flow needs of the Delta ecosystem with other beneficial uses.

The Council Should Embrace Its Role as a Synthesizer/Integrator. Primarily through the recommendations set forth in the various chapters, the fourth draft has increased the role of the Council to “direct efforts across state agencies”, as provided for in the Delta Reform Act. We believe that, as set forth in the Alternate Delta Plan, the Delta Plan should identify additional opportunities to expand the role of the Council as a facilitator, coordinator and integrator of activities amongst the various state and federal agencies which affect the Delta and the water supply associated with the Delta. While the Delta Reform Act clearly limited the regulatory authority of the Council, it provided the Council with certain managerial powers and discretion. The Legislature recognized what is lacking is a coordinating body that ensures that state and federal agencies act in a coordinated and cohesive manner. We believe that there are a series of policy questions, both strategic and tactical, that the Council needs to pursue with regards to what will be the Council’s management approach for organizing state and federal agency actions to be efficient, effective and complementary in actions they undertake in the Delta that may affect one or both of the co-equal goals. And while the fourth draft recognizes in Chapter 3, *Governance: Implementation of the Delta Plan*, that “the Delta Reform Act requires the Council to establish and oversee a committee of agencies responsible for implementing the Delta Plan” (page 41), and that “[t]he Council will commence coordination meetings of appropriate and interested federal, State, and local agencies upon adoption of the Delta Plan” (Id.), there is no further discussion, much less recommendation in the Governance chapter as to how the Council will advance this core responsibility. Instead, Chapter 3 focuses solely on its very limited regulatory authority, i.e. covered actions and consistency determinations. In the Alternate Delta Plan, we clearly emphasize how critical the role of the Council as facilitator, coordinator and integrator is to successfully achieving the co-equal goals. The Alternate Delta Plan is replete with recommended actions that emphasize this role. We encourage the Council and staff to review the Alternate Delta Plan in this context and consider how the next Draft Delta Plan (fifth draft) can broaden the discussion and emphasis of this critical role, especially in light of the direction set forth in the Delta Reform Act.

The Council Must Establish a Clear Policy Direction. The Ag-Urban Coalition once again emphasizes that we are at a crucial juncture with regards to how we proceed with addressing the co-equal goals as established in law under the 2009 Delta Reform Act. There are critical policy questions that we believe the Council still needs to address. We attempted to stimulate this

conversation amongst the Council members with the set of questions set forth in our June 10 policy letter. We are encouraged by recent policy level discussions at Council meetings. We believe that it is essential that the Council satisfactorily answer the questions in our June 10 letter to establish the policy direction of the final Delta Plan that will be approved before the end of this year.

To Ensure That Its Final Delta Plan Will Achieve The Coequal Goals, The Council Must Fully Account for the Environmental and Economic Consequences of Alternatives. The environmental and economic consequences of the seven alternatives under consideration will vary substantially. The EIR must disclose all environmental consequences of each alternative, especially the indirect consequences that implementing a “more natural hydrograph” would cause. Moreover, the Council must analyze the alternatives’ economic impacts in order to assess how well each of them would achieve the coequal goal’s underlying purposes. As noted above, we do not believe that all of the alternatives can accomplish the coequal goals in any meaningful sense. In particular, alternatives that emphasize reduced supply as a key policy approach will have predictable consequences that must be fully examined. Conveyance and storage solutions become highly unlikely, because they would not be economical and no one would be willing to pay for them. In the Delta, habitat restoration and actions to address other stressors are far less likely to occur (again, due to a shortage of funds and political will). Urban coastal areas and other regions depending upon water conveyed through the Delta would have to develop large-scale substitute supplies with potential environmental impacts. Furthermore, the Council needs to evaluate the indirect impacts associated with any proposal to adopt a more natural flow regime. There could be several severe impacts. Upstream reservoirs’ cold-water pools could be drained, raising the water temperatures in the spawning and rearing habitats of salmon, steelhead and green sturgeon, potentially causing dramatic reductions in the populations of those species of concern. In addition, an assessment should be completed to determine whether increased spring flows will affect the availability of hydropower during the heat of the summer, resulting in increased brownouts, or a greater use of other forms of energy generation that can unintentionally increase greenhouse gas emissions. The Ag-Urban Coalition pledges to work with the Council and its staff to help identify and fully disclose such impacts.

We encourage the Council to take the necessary time to struggle with and resolve these issues. Much is at stake. We believe that if the Council continues to pursue the pathway set forth in the fourth (and preceding) Draft Delta Plan you will undermine the very justifications for water agencies, and other stakeholders, to invest in programs that advance the co-equal goals. Agricultural production south of the Delta, and consequently the state’s fragile economy will be devastated by a Delta strategy specifically designed to further reduce the available water supply from the Delta. Financial contributions by water agencies for ecological restoration projects in

the Delta will be compromised as they realign their capital investments in pursuit of other approaches to acquiring necessary water supplies.

As demonstrated by the Alternate Delta Plan, the Ag-Urban Coalition recognizes that we are at a critical juncture, and that the Delta Stewardship Council and its Delta Plan are crucial to the resolving the extremely complex challenges associated with the Delta. Achieving the co-equal goals is essential to all of our success. We look forward to working with the Council as we move ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Quinn", with a stylized flourish at the end.

Timothy Quinn
Executive Director, Association of California Water Agencies
On behalf of the Ag-Urban Coalition

cc:

Mr. John Laird
Dr. Jerry Meral